



United States Department of the Interior

OFFICE OF SURFACE MINING
RECLAMATION AND ENFORCEMENT
Washington, D.C. 20240



IN REPLY REFER TO:

Ref: OSMRE-2019-00014

April 11, 2019

VIA Email

Mr. Jimmy Tobias
MuckRock News
DEPT MR 62400
411A Highland Ave
Somerville, MA 02144-2516

Dear Mr. Tobias:

On October 16, 2018, you filed Freedom of Information Act (FOIA) request OSMRE-2019-00014, seeking:

“Any and all written or electronic communications, including attachments, sent or received by Glenda Owens, or her executive staff, concerning the reinitiation of Section 7 consultation by the Fish and Wildlife Service after the Stream Protection Rule was rescinded in February 2017. This request seeks records produced between October 2017 and the request is processed”

We are writing to provide you with our response to your request. Please find enclosed 3 file consisting of 16 pages being released to you in part.

Portions of these materials are being withheld under the following FOIA Exemptions:

Portions of the enclosed documents have been redacted pursuant to Exemption 5 of the FOIA (5 U.S.C. § 552(b)(5)) under the following privileges:

Exemption 5 allows an agency to withhold “inter-agency or intra-agency memorandums or letters which would not be available by law to a party . . . in litigation with the agency.” 5 U.S.C. § 552 (b)(5). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, confidential commercial information, attorney work-product, and attorney-client privileges. We are withholding 9 pages in part under Exemption 5 because they qualify to be withheld under the following privilege:

Mr. Jimmy Tobias

Deliberative Process Privilege

The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fishbowl. A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) assure that subordinates will feel free to provide the decision-maker with their uninhibited opinions and recommendations; (2) protect against premature disclosure of proposed policies; and (3) protect against confusing the issues and misleading the public.

The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that reflect the give-and-take of the consultative process and may include recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.

The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Therefore, we reasonably foresee that the release of this information would harm an interest protected by Exemption 5 to the FOIA's general rule of disclosure. Public dissemination of the information withheld would have a chilling effect on the agency's deliberative processes, expose the agency's decision-making activities in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions.

Factual information that is not inextricably intertwined with deliberative information has been released.

Emily Morris, Attorney Advisor with the Office of the Solicitor, was consulted in reaching this decision. Dele Awoniyi, Office of Surface Mining Reclamation and Enforcement FOIA Officer, is responsible for making this decision.

DOI FOIA/Privacy Act Appeals Office Contact Information

Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, DC 20240
Attn: FOIA/Privacy Act Appeals Office

Telephone: (202) 208-5339

Mr. Jimmy Tobias

Fax: (202) 208-6677

Email: FOIA.Appeals@sol.doi.gov

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. *See* [5 U.S.C. § 552\(c\)](#). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Office of Government Information Services Mediation

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

If you have any questions regarding any issues discussed in this letter, you may contact me by phone at 202-208-5840, by fax at 202-501-0549, by e-mail at foia@osmre.gov or by mail at Office of Surface Mining Reclamation and Enforcement, 1849 C Street, N.W., MS 1200W-MIB, Washington, D.C. 20240.

Sincerely,

Dele Awoniyi
Office of Surface Mining Reclamation
and Enforcement
FOIA Officer